LANDLORD AND TENANT—LEASE BY LIFE TENANT—ADOPTION BY REMAINDERMAN.—A, tenant for life, leased the premises to B for five years and later entered into another lease to B for ten years commencing with the expiration of the first lease. A died before the expiration of the first lease; and C, the remainderman, accepted money payments from B according to the terms of the first and then of the second lease. On previous appeals, *Sanders* v. *Sutlive Bros. & Co.* (1913) 163 Iowa 172, 143 N. W. 492; (1916) 175 Iowa 582, 154 N. W. 610, it was held that the parties by their conduct had signified their acceptance of the second lease. It also appeared that C had sold the property to D, stipulating that the grantee assume the lease. In an action by D to recover possession and damages from B, *held,* that the remainderman and B had not entered into a new contract but had adopted or ratified the ten-year lease executed between the life tenant and B, and no recovery could be had. *Sanders* v. *Sutlive Bros. & Co.* (Iowa 1919) 174 N. W. 267.

A lease granted by a life tenant becomes upon his death absolutely void as to the residue of the term. *James* v. *Jenkins* (1790) Buller N. P. *96; *Jenkins* v. *Church* (1776) 2 Cowp. 482; *Coakley* v. *Chamberlain* (N. Y. 1869) 38 How. 483; *Nesbitt* v. *Thompson* (1916) 93 Misc. 251, 256, 157 N. Y. Supp. 166. The remainderman is entitled to immediate possession, *Edghill* v. *Mankey* (1907) 79 Neb. 347, 112 N. W. 571; *cf. Page* v. *Wight* (1867) 96 Mass. 182, subject to the lessee's right of emblements. 2 Tiffany, Landlord & Tenant, § 251a; *Edghill* v. *Mankey, supra.* But where the lessee continues in possession with the assent of the remainderman, a new tenancy may arise, 1 McAdam, Landlord & Tenant (4th ed.) § 65; *Tucker* v. *Morse* (1830) 1 B. & Ad. 365; *Lowrey* v. *Reef* (1890) 1 Ind. App. 244, 27 N. E. 626, all the terms and conditions of which, with the exception of duration, are governed by the old lease, in the absence of express agreement. *Jordan* v. *Ward* (1789) 1 H. Bl. 97; *Laughran* v. *Smith* (1878) 75 N. Y. 205 (*semble*); *Baltimore & O. R. R.* v. *West* (1897) 57 Ohio St. 161, 49 N. E. 344 (*semble*). But since the residue of the lease is void and not voidable, the remainderman cannot confirm or adopt it. 1 McAdam, *op. cit.,* § 65; Shepherd, Touchstone *284; *Nesbitt* v. *Thompson, supra.* And should the court imply in fact a new lease for ten years, it could still be met by the defence of the statute of frauds. See *Halligan* v. *Frey* (1913) 161 Iowa 185, 141 N. W. 944; Iowa Code (1897) § 4625(4); *cf.* N. Y. Consol. Laws. c. 50 (Laws of 1909 c. 52) §242.

MANDAMUS—SCHOOLS—RIGHT OF PUPIL TO DIPLOMA.—The plaintiff had satisfied all the usual requirements for graduation from the defendant high school; but for refusing to obey a regulation, which the court found was an unreasonable one, she was denied her diploma. *Held,* she had a right to a diploma and was entitled to a writ of mandamus compelling the school authorities to issue it. *Valentine* v. *Independent School Dist.* (Iowa 1919) 174 N. W. 334.

One who has satisfactorily completed the prescribed course and fulfilled all the requirements of a recognized educational institution has a right to such proof of those facts as the institution usually issues. *State ex rel. Nelson* v. *Lincoln Medical College* (1908) 81 Neb. 533, 116 N. W. 294; *cf. People ex rel. Cecil* v. *Bellevue, etc. College* (1891) 60 Hun 107, 14 N. Y. Supp. 490, *aff'd* 128 N. Y. 621, 28 N. E. 253. The officers thereof are under a correlative duty in the proper case to

issue it, *Northington* v. *Sublette* (1902) 114 Ky. 72, 69 S. W. 1076; *cf. Keller* v. *Hewitt* (1895) 109 Cal. 146, 41 Pac. 871, and it must be in the proper form. *Hamlett* v. *Reid* (1915) 165 Ky. 613, 177 S. W. 440. But in the exercise of fair discretion they may refuse to grant such a diploma, and the courts will not interfere, *State ex rel. Niles* v. *Orange Training School etc.* (1899) 63 N. J. L. 528, 42 Atl. 846, unless there has been an abuse of discretion, *State ex rel. Nelson* v. *Lincoln Medical College, supra; cf. Illinois etc. Examiners* v. *People ex rel. Cooper* (1887) 123 Ill. 227, 13 N. E. 201, or their action was purely arbitrary and capricious. *Cf. People ex rel. Cecil* v. *Bellevue etc. College, supra; Hamlett* v. *Reid, supra.* There is an analogous doctrine in the re-instatement cases, where it is held that a student in a public or semi-public institution may not be expelled without sufficient cause. *Baltimore University* v. *Colton* (1904) 98 Md. 623, 57 Atl. 14; *Jackson* v. *State ex rel. Majors* (1899) 57 Neb. 183, 77 N. W. 662. Generally, a mandamus can be had to compel the issuance of a diploma; *State ex rel. Nelson* v. *Lincoln Medical College, supra; Northington* v. *Sublette, supra; contra, State ex rel. Burg* v. *Milwaukee Medical College* (1906) 128 Wis. 7, 106 N. W. 116; and a careful analysis shows that in the cases where mandamus was refused, it was because the person was found by the authorities in the fair exercise of their discretion not qualified in his studies, *Sweitzer* v. *Fisher* (1915) 172 Iowa 266, 154 N. W. 465; *State ex rel. Niles* v. *Orange Training School etc., supra,* or guilty of a serious breach of discipline; *People ex rel. O'Sullivan* v. *New York Law School* (1893) 68 Hun 118, 22 N. Y. Supp. 663; or because a mandamus was not the proper remedy in any event, *State ex rel. Burg* v. *Milwaukee Medical College, supra,* or in a case where the student's qualifications, which would give rise to the right to a diploma, were disputed; *People ex rel. Jones* v. *New York etc. Hospital* (1892) 20 N. Y. Supp. 379; but in none of these is the right of a properly qualified person to a diploma denied.

MASTER AND SERVANT—INDEPENDENT CONTRACTOR.—One McGuire contracted to deliver the defendant's goods. McGuire was to furnish his own services, a horse and wagon, on which was painted the defendant's name, and was to receive $27 a week. He was to report every day at the defendant's factory at 8 A. M. and work until 5:30 P. M. McGuire's horse, which was known by him to be vicious, bit the plaintiff. *Held,* "It is perfectly clear on the evidence that the relationship of master and servant existed between McGuire and the company" and that therefore the defendant was liable for the plaintiff's injury. *Stapleton* v. *Butensky* (App. Div., 1st Dept. 1919) 177 N. Y. Supp. 18.

Upon the evidence it is not so clear that McQuire was the servant of the defendant. He was a servant only if he was doing the defendant's work as distinguished from an undertaking of his own. See the dissenting opinion in *Schmedes* v. *Deffaa* (1912) 153 App. Div. 819, 138 N. Y. Supp. 931, adopted by the Court of Appeals in 214 N. Y. 675. Factors to be considered in determining whose work was being done are: in whom was the control of the work; *Andrews* v. *Boedecker* (1885) 17 Ill. App. 213; who furnished the material or tools; contrast *Ireland* v. *Clark* (1912) 109 Me. 239, 83 Atl. 667 with *Linquist* v. *Hodges* (1911) 248 Ill. 491, 94 N. E. 94; and who bore the risk of profit and loss; see *People* v. *Orange County Rd. Const. Co.* (1903) 175 N. Y. 84, 90, 67 N. E. 129. In the instant case, it is an admitted fact that McGuire furnished the horse and wagon, the tools necessary for the work, and